

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

COMMONWEALTH OF VIRGINIA,

*Plaintiff,*

v.

PATRICK O. LOCKHART,

*Defendant.*

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Case No. 1:22-cv-01047 (PTG/WEF)

ORDER

This matter comes before the Court on Defendant Patrick O. Lockhart's Notice of Removal from Fairfax County Circuit Court (Dkt. 1) and Motion to Vacate Final Order in State Court (Dkt. 4). On September 25, 2019, Defendant was convicted by the Juvenile and Domestic Relations District Court of Fairfax County, Virginia for custodial interference in violation of Va. Code § 18.2-49. Since that date, Defendant has filed a number of motions, including in the Circuit Court of Fairfax County, seeking relief from his conviction. Dkt. 1-1. On September 14, 2022, Defendant filed a Notice of Removal with this Court pursuant to § 1455.<sup>1</sup> Dkt. 1. The relevant statute provides:

A notice of removal of a *criminal prosecution* shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

28 U.S.C. § 1455(b)(1) (emphasis added). 28 U.S.C. § 1455(b)(4) requires that this Court order a summary remand if it "clearly appears on the face of the notice and any exhibits annexed

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<sup>1</sup> The statute provides, in pertinent part: "(a) Notice of Removal. A defendant or defendants desiring to remove any criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such prosecution is pending a notice of removal ...." 28 U.S.C. § 1455(a).

thereto that removal should not be permitted.” 28 U.S.C. § 1455(b)(4). For the reasons that follow, “it clearly appears” that “removal should not be permitted” in this action. *Id.*

At the time Defendant filed the Notice of Removal, there was no pending criminal prosecution against him to be removed to federal court. To the contrary, Defendant’s criminal prosecution concluded in 2019 when the Juvenile and Domestic Relations District Court of Fairfax County entered the judgment of conviction. *Williams v. Holloway*, No. 3:14-cv-126, 2014 WL 5529742, at \*2 (E.D. Va. Oct. 31, 2014). As a result, his notice of removal was untimely, as it was filed years after the state criminal prosecution concluded. Defendant also failed to seek leave to file a late notice of removal. For the above stated reasons, it is hereby

ORDERED that this matter is REMANDED to the Juvenile and Domestic Relations District Court of Fairfax County pursuant to 28 U.S.C. § 1455(b)(4). It is further

ORDERED that Defendant’s Motion to Vacate Final Order in State Court (Dkt. 4) is DENIED AS MOOT.

The Clerk is directed to send a copy of this Order to Plaintiff and to the Juvenile and Domestic Relations District Court of Fairfax County.

March 1, 2023

  
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Patricia Tolliver Giles  
United States District Judge